IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5854 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE RAVI R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MAHENDRASING R WAGHELA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 5854 of 1991

MR JF SHAH for Petitioner No. 1

MR.H.L. JANI, ASSISTANT GOVERNMENT PLEADER for Respondent No. 1-2

CORAM : MR.JUSTICE RAVI R.TRIPATHI

Date of decision: 11/08/2003

ORAL JUDGEMENT

The present petition is filed by the petitioner

who was appointed as Tool Keeper in Transport Section of respondent no.2 with effect from 4.12.1978. The petitioner possesses educational qualification of Secondary School Certificate which he passed in the year 1974. He also possesses ITI-Motor Mechanic Trade Certificate which he obtained in the year 1975. He has experience as Apprentice Mechanic in S.T. Work Shop which he completed during 1976-78. The petitioner after having joined as Tool Keeper in the year 1978, he came to be promoted in the cadre of Mechanic with effect from 10.10.1985, where he was working till the date of filing of the petition. It is the case of the petitioner that during his service the pay scale of the post of Mechanic came to be revised from Rs.350 -560/- to Rs.1200 -- 2040/-.

2. In the year 1986 when an advertisement came to be issued by the Deputy Director, Medical Services, Gujarat State, Ahmedabad, a copy of which is produced at Annexure 'B' to this petition, gave a cause to the petitioner to make a grievance. By the said advertisement applications were invited for the post of Mechanic (Vehicle Examiner) and the pay scale mentioned was Rs.380 -- 560/-. In the said advertisement qualifications prescribed for the said post were, (i) ITI-Motor Mechanic Course, (ii) Three years experience of motor repairing in a Government or Semi Government organisation or Transport (Undertaking), (iii) Licence in Heavy Driving. In the alternative required qualifications were: (i) Pass in Standard-V with Gujarati or Hindi with six years motor repairing experience, (ii) Possessing of Heavy Driving Licence for the last two years.

3. The petitioner made a representation in the month of March 1986 through the Government Automobile Technical Staff Union wherein at item (6) Mechanic (Vehicle Examiner) is referred to. The second representation was made through the same Union in the month of September 1998 and the third in line is the representation made in the month of February 1991. All these three representations are annexed at Annexures 'C', 'D' & 'E' respectively to this petition. As nothing was heard by the petitioner, the petitioner filed the present petition in the year 1991 which came to be admitted by this Court on 13.1.1992.

4. The present petition is contested by respondent no.2 by filing an affidavit in reply dated 15.2.2002 sworn by one Smt.P.M. Soni, Administrative Officer, Health, Medical Services and Medical Education, Gandhinagar. Along with the said affidavit a

Notification of the Finance Department of the Government of Gujarat dated 20.3.1991 is annexed, by which the Gujarat Civil Services (Revision of Pay) Rules, 1987 are amended. Under the said amended Rules, pay scale of the post of Vehicle Examiner which is at serial no.144 is revised. The present pay scale for the post is shown Rs.350-560/-. The same is revised to Rs.1350-2200/-. The said rules as provided in subsection (2) of section 1 have come into force on and from the 1st day of January 1986. Mr.Vaishnav, learned advocate appearing for the petitioner submitted that in fact if the said rules were given effect to, the petitioner would not have had any surviving grievance, but as the same is not given the present petition is pressed by the petitioner. Mr.Vaishnav, learned advocate submitted that the post of Mechanic, i.e. Vehicle Examiner is governed by the Rules notified by a Notification of the Health and Family Welfare Department, Sachivalaya, Gandhinagar dated 16.8.1984, a copy of which is at Annexure 'A' to the petition. He submitted that the mode of recruitment to the said post is by 'promotion' as well as by 'direct selection'. The Rules which are framed by the aforesaid Notification are titled as, "Mechanic-Vehicle Examiner (Recruitment) Rules, 1984." Rule 2 provides for appointment to the post of Mechanic-Vehicle Examiner (State health Transport Organisation) by promotion of a person who is found to be of 'proved merit and efficiency' from amongst the persons working as Tool Keeper. It is further provided that the person should have served in Subordinate service of the Public Health Department in the State Health Transport Organisation at least for a period of two years. Under Sub-rule (b) of Rule 2 it is provided that the appointment can also be made by 'direct selection'. Rule 3 provides for appointment by direct selection. What is provided under Rule 3 is that the person should not be more than 30 years of age and that he must possess Industrial Training Institute Certificate of Motor Mechanic and three years experience of Motor Repairing work in any Department of the Government or Transport Undertaking, either before or after obtaining the prescribed qualification. It is also provided that preference will be given to candidates possessing heavy Driving Licence. It is also provided that the persons who have studied Standard-V either in Gujarati or Hindi with six years experience of Motor Repairing work and Heavy Driving Licence for two years will also be considered eligible for direct recruitment. Mr.Vaishnav, learned advocate invited attention of the Court to the fact that the Rules do provide for relaxation in the upper age limit in favour of the candidate who is already in service of the Government of

Gujarat, in accordance with the provisions of Gujarat Civil Services Classification and Recruitment (General) Rules, 1967 as amended from time to time.

5. Mr.Vaishnav, learned advocate emphatically submitted that this is a case wherein the authorities have declined to accept even the most reasonable demand of the petitioner and have thus, forced the petitioner to approach this Court, thereby making him to wait since 1991 till date. As the legitimate claim of the petitioner is not accepted, he is deprived of the benefits which otherwise would have been given by the Department itself. He submitted that by any standard, that is to say either by considering the case of the petitioner by 'promotion channel' or 'direct selection channel', he was eligible and was having much more experience than what was required under the Rules and therefore, he ought to have been granted the benefit of revised pay scale of Rs.1350-2200/-.

6. Mr.H.L. Jani, the learned Assistant Government Pleader made his submissions basing them on paras 6, 11 & 12 of the affidavit in reply filed by the Administrative Officer. He drew the attention of the Court in particular to the contents of para 6, which read as under:

> "6. .. .. I say that the petitioner is not eligible for direct selection unless and until he passes through the process of selection as provided under the law."

7. In paras 11 & 12 it is stated that by Notification dated 20.3.1991 issued by the Finance Department, the pay scale of the Vehicle Examiner on Health side has also been revised to Rs.1350-2200/-. The submission is that the petitioner was holding the post of Mechanic and not that of 'Vehicle Examiner' and therefore, he is not extended the benefits under the said Notification. The submission does not warrant any cognisance for the simple reason that Mr.Jani, the learned Assistant Government Pleader is not able to point out as to whether there is any separate post titled as 'Vehicle Examiner'. Mr.Vaishnav, the learned advocate for the petitioner submitted that it was the only post, i.e. 'Mechanic-Vehicle Examiner', there are no two separate posts like 'Mechanic' and 'Vehicle Examiner' and therefore, the petitioner must be granted the benefits accruing from Notification dated 20.3.1991. The submission of Mr.Jani, the learned Assistant Govt. Pleader that the petitioner has not successfully passed

through the process of selection is also of no gain inasmuch as the petitioner has placed on record and has satisfactorily demonstrated before the Court that the petitioner was qualified for the post by promotion channel as well as by direct selection channel. In light of that there is no reason for which the Government ought to have withheld the benefits of the revised pay scale. Only because the petitioner was serving in the Health Section and the revision was given for Medical section is no valid ground for denying the benefits of the same pay scale to the petitioner when the employer, namely, State of Gujarat is the same and more so when these are two different sections of the same Department.

8. In fact this is a case wherein the Government officers could have avoided the litigation. Had the Department taken into consideration any of the three representations made by the Government Automobile Technical Staff Union starting from 1986 to 1991 (Annexures 'C', 'D' & 'E'). the petitioner would not have been required to file the present petition. The affidavit in reply which is filed by the Administrative Officer does not deal with any of the representations. It does not set out any reason/s as to why the said representations were not considered.

9. In the result this petition succeeds. It is declared that the petitioner is entitled to the benefits of revised pay scale of Rs.1350-2200/- under the Notification dated 20.3.1991. As the said Rules are made effective from 1.1.1986 the petitioner shall get the said benefits from that date. The respondent-authorities are directed to extend the benefits of revised pay scale to the petitioner within six months from the date of receipt of writ of this Court. It goes without saying that once the petitioner is granted the aforesaid pay scale he will be entitled to the benefits of subsequent pay revisions, if any, unless he is forbidden by any lawful order/s.

10. The petition is allowed in the above terms. Rule is made absolute. No order as to costs.

(Ravi R. Tripathi, J.)

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